THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.17497 OF 2004

Dated: 12th April, 2006.

Between:

K. Suresh … Petitioner

And

The Prohibition & Excise Superintendent,

Karimnagar District. … Respondent

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.17497 OF 2004

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ORDER :

The writ petitioner is holding a licence in Form IL-24 for sale of liquor in retail and has been running the business under the name and style of M/s. Highway Wines at Bommakal, Karimnagar District. The said licence was granted o n 31-3-1998 and was being renewed from time to time by the respondent. It is stated that on payment of licence fee of Rs.3 lakhs, the licence was renewed for the year 2002-03 by the respondent vide proceedings dated 6-4-2002. Subsequently, for the year 2003-04, the petitioner paid the licence fee of Rs.8,25,000/- and accordingly the renewal was granted. While so, the impugned notice dated 29-1-2004 was issued by the respondent informing the petitioner that as per the census figures of 2001, the population of Karimnagar was 2,18,302 divided into 14 wards of Karimnagar Municipality and that Bommakal is part of Karimnagar Municipality and therefore the licence fee payable by the petitioner had been increased to Rs.8,25,000/- from the year 2002-03 onwards. Since for the year 2002-03, only a sum of Rs.3 lakhs was collected as per 1991 census, the petitioner was called upon to pay the differential licence fee of Rs.5.25 lakhs within a week from the date of receipt of the said proceedings. Aggrieved by the said order, this writ petition is filed.

The learned Counsel for the petitioner contends that no prior notice was issued nor any opportunity was afforded to the petitioner before passing the impugned order calling upon him to pay the differential licence fee for the year 2002-03. It is also contended that since the petitioner had already paid the licence fee for the year 2002-03, it is not open to the respondent to make any demand for payment of the alleged differential licence fee after the expiry of licence period. The learned Counsel also submitted that as a matter of fact the licensed premises of the petitioner was situated at Bommakal, the population of which was less than 10000, but the respondent had wrongly mentioned the impugned proceedings that the licensed premises was situated in Karimnagar Municipality.

On the other hand, the learned Government Pleader contends that the petitioner is bound to pay the prescribed licence fee as agreed under the counterpart agreement and therefore there is no illegality in the impugned demand.

Under Rule 25 of the A.P. Indian Liquor and Foreign Liquor Rules, 1970 (for short,

'the rules') the annual licence fee for the licence in Form IL-24 shall be as amended from time to time at the rates as shown in the schedule appended to the Rules. As per clause-8 of the schedule which deals with the licence in form IL-24, a sum of Rs.3 lakhs is payable towards annual licence fee where the population of the village/town/city does not exceed 10000. In case, the population is above 10000, but does not exceed 50000, a sum of Rs.4,50,000/- is payable towards annual licence fee. Similarly, if the population is above 50000, but does not exceed Rs.3 lakhs, the annual licence fee payable is Rs.8,25,000/-.

The specific case of the respondent is that for the year 2002-03 the licence fee of Rs.3 lakhs was collected from the petitioner on the basis of 1991 census. However, as per census-2001, the licensed premises of the petitioner falls in the slab of Rs.8.25 lakhs i.e., where the population exceeds 50000, but does not exceed Rs.3 lakhs. Hence, the petitioner is liable to pay the licence fee of Rs.8,25,000/- from the year 2002-03 onwards and accordingly he was called upon to pay the differential licence fee.

It is no longer *res integra* that the re-fixing or the revision of licence fee on the basis of the population figures cannot be termed as 'creating new liability' on the licensee. In SWAGATH vs. EXCISE SUPERINTENDENT it was held that the liability to pay the licence fee as per the population of the concerned place was already there even by the date of issuing the licence and that it is not a case of enhancement in the rate after the commencement of year by reason of law.

The learned Government Pleader submits that as a matter of fact the petitioner at the time of grant of licence has executed a counterpart agreement undertaking to pay the enhanced licence fee that may be levied by the respondents from time to time.

Since admittedly, under the impugned proceedings, the differential licence fee was sought to be collected only on the latest census figures, I am unable to hold that the impugned order is arbitrary or illegal on any ground whatsoever. A Division

Bench of this Court in W.A.No.1610 of 2002 and batch having considered the scope of Rule 3 (q) of the Rules which defines population, as amended by G.O.Ms.No.234, dated 30-3-2002 held that the Rule does not make any distinction between provisional or final publication and that for the lease year 2002-03 the population would mean the figures of the population as published in 2001 census. The said Rule runs as under :

> *"Population means, the figure of population as officially published in the latest census.*
>
> *Provided that for the lease year 2002-2003 the population would mean the figures of population as published in the 2001 census."*

Hence, the action of the respondents in calling upon the petitioner to pay the differential licence fee on the basis of the figures of the population as published in 2001 census is in accordance with law.

It is also relevant to note that as per Rule 25 of the Rules as amended under G.O.Ms.No.449, dated 22-3-2003, the licence fee in respect of retail shop situated within a belt area of 2 Kms from the periphery of Municipalities and notified areas shall also be at the rate of licence fee of retail shops situated within the limits of such Municipalities and notified areas. Admittedly, the petitioner's IL-24 Shop is located in Bommakal Ward No.11 of Karimnagar which is within 2 Kms of periphery of Municipality. Therefore, the petitioner is liable to pay the licence fee at the rates applicable to the retail shops situated in Karimnagar Municipality from 13-3-2003 onwards. Since the petitioner paid only a sum of Rs.3 lakhs for the year 2002-03, the respondents have rightly called upon him to pay the balance of Rs.5,25,000/- towards the differential licence fee.

For the aforesaid reasons, the contentions of the petitioner are without any substance.

Moreover, as rightly contended by the learned Government Pleader, the terms of the counterpart agreement executed under Section 29 of the A.P. Excise Act read with

Rule 30 (3) of the Rules, the petitioner having agreed to pay the enhanced licence fee, cannot now raise any objection for payment of the differential licence fee.

Viewed from any angle, the writ petition is devoid of any merit and the same is accordingly dismissed. No costs.

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G. ROHINI, J.

Dt. 12–04-2006.

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